

### **REMARKS**

Claims 1-40 were examined and reported in the Office Action. Claims 1, 8, 13, 14, 22-28, 30, 31 and 35-37 are rejected. Claims 36 and 38 are cancelled. Claims 1, 35, 37, 39 and 40 are amended. Claims 1-35, 37 and 39-40 remain.

Applicant requests reconsideration of the application in view of the following remarks.

#### **I. 35 U.S.C. §102(e)**

It is asserted in the Office Action that claims 1, 8, 13, 14, 22-28, 30, 31 and 35-37 are rejected under 35 U.S.C. §102(e) as being anticipated by Tilton "Hybrid Image Segmentation for Earth Remote Sensing Data Analysis," ("Tilton"). Applicant respectfully traverses the aforementioned rejections for the following reasons.

According to MPEP §2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990))."

Applicant's claim 1 contains the limitations of "... repeating the resulting segmentation until the resulting segmentation converges in a stable or approximately stable condition in which no further contiguous picture objects are determined to be conforming, wherein a feature difference is determined from a comparison between the specific homogeneity criterion and a tolerance via heterogeneity introduced by merging and arising from a potential combination of the contiguous picture objects."

Applicant's amended claim 35 contains the limitations of "... repeating the resulting segmentation until the resulting segmentation converges in a stable or approximately stable condition in which no further contiguous picture objects are determined to be conforming to form a hierarchical structure having a plurality of hierarchical planes which are present in a locally different hierarchical depth, wherein respective modifications are performed on respective highest local hierarchical planes of the hierarchical structure."

Applicant has amended claim 1 to contain the limitations of claim 2, except for the limitation of weighting with the size of respective picture objects after and before merging. Applicant's claimed invention uses homogeneity criterion that relates to heterogeneity, which results from a potential merging, i.e., a relation between "a state before" and "a state after." Tilton, however, does not teach, suggest or disclose all of the limitations of Applicant's claims 1 and 35. Since Tilton does not disclose, teach or suggest all of Applicant's amended claims 1 and 35 limitations, as listed above, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. §102(e) has not been adequately set forth relative to Tilton. Thus, Applicant's amended claims 1 and 35 are not anticipated by Tilton.

Moreover, it is asserted in the Office Action that claim 2 would be allowable if written in independent form including the base claim. Therefore, Applicant respectfully asserts that claim 1 is now allowable for the above reasons.

Applicant has amended claim 35 to include the limitations of claims 36 and 38. It is asserted in the Office Action that claim 38 would be allowable if written in independent form including the base claim and any intervening claims. Therefore, Applicant respectfully asserts that claim 35 is now allowable for the above reasons.

Additionally, the claims that directly or indirectly depend on claims 1 and 35, namely claims 8, 13-14, 22-28, 30-31, and 37 (claim 36 being cancelled), respectively, are also allowable for the same above reasons.

Accordingly, withdrawal of the 35 U.S.C. §102(e) rejections for claims 1, 8, 13, 14, 22-28, 30, 31 and 35-37 are respectfully requested.

**II. Allowable Subject Matter**

Applicant notes with appreciation the Examiner's assertion in the Office Action that claims 2-7, 9-12, 15-21, 29, 32-34 and 38-40 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As asserted above in section I, Applicant has amended claims 1 and 35 including the base claims and intervening claims.

Applicant respectfully asserts that claims 1-35, 37 and 39-40, as it now stands, are allowable for the reasons given above.

### CONCLUSION

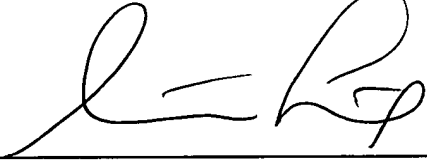
In view of the foregoing, it is believed that all claims now pending, namely 1-35, 37 and 39-40, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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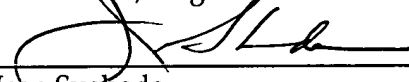
Dated: June 18, 2004

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### **CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450 on June 18, 2004.

  
Jean Svoboda